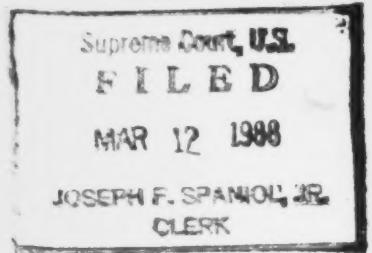


87-1721



CASE NUMBER

SUPREME COURT OF THE

UNITED STATES

OCTOBER 1987 TERM

MONROE MCGREGOR, PETITIONER

V.

COMMONWEALTH OF KENTUCKY, RESPONDENT

ON WRIT OF CERTIORARI

TO THE SUPREME COURT

OF KENTUCKY

PETITION FOR CERTIORARI

COUNSEL OF RECORD FOR MONROE MCGREGOR

STEPHEN ROBERT BODELL

POST OFFICE BOX 970

PADUCAH, KY 42002

502-443-4052



Question presented for review.

Is a state court rule of procedure which permits a state court trial judge to suspend the published state court case law in the conduct of a trial an unconstitutional deprivation of the rights of equal protection of the laws and due process of law protected under the 14th Amendment to the United States Constitution?

Parties to the Proceeding.

The parties in the proceedings below were Mr. Monroe McGregor and the Commonwealth of Kentucky.

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Table of Authorities.

Coleman v. Commonwealth, 200 SW2d 151

(1947)                      Pages 12, 13.

Holt v. Commonwealth, 259 SW2d 463 (Ky.

1953)                      Pages 12, 13.

Island Creek Coal Company v. Rodgers,

644 SW2d 339 (1982, Ky App)

Pages 12, 13.

Parsley v. Commonwealth, 306 SW2d 284

(Ky. 1957)                Pages 12, 13.

Section One of 14th Amendment to

United States Constitution

Pages 1, 7, 8, 9, 10, 14.

Kentucky Rule of Criminal Procedure 9.24

Pages 4, 6, 7, 8, 9, 10, 12, 13, 14.

Opinions Below.

In the case of Monroe McGregor v. Commonwealth of Kentucky the McCracken Circuit Court entered its final judgment and sentence of imprisonment on December 15, 1986. Said judgment is not reported. The Kentucky Court of Appeals entered its opinion Affirming the judgment of the circuit court on August 28, 1987. Said opinion is not published. On October 30, 1987 the Court of Appeals entered Order Denying Petition for Rehearing. Said Order is not published. On January 12, 1988 the Supreme Court of Kentucky entered Order Denying Discretionary Review. Said Order is not published.

1. Grounds on which jurisdiction is invoked. The Supreme Court of Kentucky entered Order Denying Discretionary Review in this matter on January 12, 1988. It is believed that 28 U. S. C. Sec. 1257 confers jurisdiction to review by writ of certiorari.

2. The law involved. The constitutional provision which the case involves is the 14th Amendment to the Constitution of the United States, Section 1, which states as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. Statement of the case. This case

began with Monroe McGregor being charged with an assault in the McCracken Circuit Court in Paducah, Kentucky. The prosecution stemmed from an automobile accident in which Mr. McGregor was involved. As a result of the accident a civil lawsuit was filed with Mr. McGregor as a defendant. Several months after the civil action was filed, and without settlement having been reached in the civil case, a criminal indictment was sought and obtained against Mr. McGregor.

An indictment was returned for second degree assault, which in Kentucky is a Class C felony carrying a maximum penalty of ten years in the penitentiary. Mr. McGregor refused to plead guilty to a felony in the case, and he also fired the first lawyer that he had hired to represent him in the case. A few days after firing his first lawyer and hiring his



new lawyer in the case, the prosecutor, who was a relative of the first lawyer, sought a higher degree of indictment against Mr. McGregor. A new indictment was returned against Mr. McGregor for first degree assault, which in Kentucky is a Class B felony carrying a maximum penalty of twenty years in the penitentiary.

Mr. McGregor pleaded not guilty, and after repeated delays the case was tried to a jury in the McCracken Circuit Court. In Kentucky the levels of assault are: first degree, a Class B felony; second degree, a Class C felony; third degree, a Class D felony; and fourth degree, a Class A misdemeanor. The trial jury returned a guilty verdict on fourth degree assault, recommending time in the county jail and a fine.

Mr. McGregor, in presenting his

side of the case, was not permitted to present to the jury various pieces of evidence which clearly are authorized to be presented to the jury by published decisions of the Kentucky state appellate courts. Such abrogations destroy the principle of stare decisis which underlies American jurisprudence, and these abrogations will be stated in greater detail in succeeding paragraphs of this section of the Petition.

Mr. McGregor appealed his conviction to the Kentucky Court of Appeals, but that court affirmed his conviction. He sought review of the conviction by the Supreme Court of Kentucky, there addressing the constitutional defects in Kentucky Rule of Criminal Procedure 9.24. He was denied at the level of the Supreme Court of Kentucky. He now petitions the Supreme Court

of the United States.

The trial court in this matter was the McCracken Circuit Court. In that court, in chambers before the trial commenced, and during the trial by offers of testimony as well as by means of a procedure known as avowal, Mr. McGregor sought to permit testimony in two areas which clearly are permitted by the published case law of the state courts of Kentucky. Mr. McGregor sought to have the jury hear testimony that the complaining witness in the criminal case had months earlier filed a civil lawsuit against Mr. McGregor seeking many thousands of dollars. Mr. McGregor also sought to have the jury hear testimony that the city police officer who investigated the accident and testified at trial issued citations against Mr. McGregor for traffic violations but

failed to issue citations against the complaining witness for any of his traffic violations because by the police officer's admission he felt sorry for the complaining witness. The published cases in the state courts of Kentucky clearly authorize the jury to hear such testimony to impeach witnesses. The jury in Mr. McGregor's trial was not permitted to hear the requested testimony.

Mr. McGregor appealed to the Kentucky Court of Appeals, which turned down his appeal. His point was that he should be granted a new trial in which these published decisions were adhered to in the admission of testimony impeaching trial witnesses. The Court of Appeals in its opinion excused the errors which took place in Mr. McGregor's trial under state Rule of Criminal Procedure 9.24. Mr. McGregor sought a rehearing with the

Court of Appeals stating that the Court of Appeals had now erred by not enforcing the body of published case law which would and should protect Mr. McGregor in his trial. Mr. McGregor stated that such action by the Court of Appeals violated his rights of equal protection and due process protected by both the state and federal constitutions. The Court of Appeals denied Mr. McGregor's petition for rehearing.

Mr. McGregor brought his case to the Supreme Court of Kentucky, asking that court to review his case. Mr. McGregor pleaded to the Supreme Court of Kentucky that Kentucky Rule of Criminal Procedure in theory and application was unconstitutional because it denied the party in a criminal type case his rights to equal protection and due process which are protected by the 14th Amendment

to the United States Constitution. The thrust of his argument was that this state rule of procedure permitted a trial judge, at least in criminal cases, to suspend any or all of the governing body of published state case law at the pleasure of the trial judge. It was also Mr. McGregor's position that such a procedural rule did away with the principle of stare decisis in Kentucky jurisprudence. The Supreme Court of Kentucky denied review to Mr. McGregor.

Mr. McGregor petitions the Supreme Court of the United States on this constitutional point.

4. Argument. Kentucky Rule of Criminal Procedure 9.24 states as follows:

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order, or in anything done or omitted by the court or by any of the parties, is ground for granting a new trial or for setting aside a

verdict or for vacating, modifying or otherwise disturbing a judgment or order unless it appears to the court that the denial of such relief would be inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

Rule 17 of the Supreme Court of the United States details the considerations governing review on certiorari. It is the contention of Mr. McGregor that the Kentucky Court of Appeals and the Supreme Court of Kentucky have decided an important question of federal law which has not been, but should be, settled by the Supreme Court of the United States.

Mr. McGregor contends that the 14th Amendment to the United States Constitution affords and guarantees him the very important rights of equal protection of the laws and due process of law. Mr. McGregor also contends that Kentucky Rule

of Criminal Procedure 9.24 is unconstitutional, both in theory and in application, pursuant to the equal protection and due process rights protected by the 14th Amendment..

Rule 9.24 is a state rule of criminal procedure. Civil litigants in Kentucky are not subjected to such an atomic attack on the principle of stare decisis. However, all criminal litigants, not just Mr. McGregor, are subject to that attack on stare decisis.

In his trial in the McCracken Circuit Court in Paducah, Kentucky Mr. McGregor was not permitted to offer evidence, which he was prepared to offer through the testimony of witnesses, that the complaining witness on the felony charge had several months earlier filed a major civil lawsuit against Mr. McGregor and had not yet, if ever he was,



received any satisfaction from the civil case.

Mr. McGregor was also not permitted to offer to the jury evidence, which he was prepared to offer through the testimony of witnesses, that the city police officer who investigated the accident scene had only issued citations to Mr. McGregor for traffic violations when in fact the officer should have issued citations to the complaining witness for each of his traffic violations but admitted, not in front of the jury, that he failed to issue any citations to the complaining witness because he felt sorry for him. The record in this case shows how critical this abrogation of rightful admission of evidence was for the officer is most probably the only prosecution witness found to be credible by the jury. The complaining witness and the driver of

a third vehicle called by the prosecution directly contradicted each other on major events in their testimony. A third witness called by the prosecution, a pregnant teen-age girl who had dropped out of high school, was so self-contradictory in answer after answer of her testimony as to be practically totally unbelievable.

There are several published decisions in the case law of the Kentucky state courts which protect the right of a litigant to introduce evidence, including by testimony, which impeaches any witness during a proceeding such as a trial. In his trial Mr. McGregor, as detailed above, was not permitted to impeach the complaining witness or the city police officer, in direct contravention of stare decisis and the published case law of Kentucky. These cases which should have protected Mr. McGregor, but for Rule 9.24, include:

Holt v. Commonwealth, 259 SW2d 463 (Ky. 1953); Parsley v. Commonwealth, 306 SW2d 284 (Ky. 1957); Coleman v. Commonwealth, 200 SW2d 151 (1947); and Island Creek Coal Company v. Rodgers, 644 SW2d 339 (1982, Ky App).

Nevertheless, Rule 9.24 permits the trial judge, at his pleasure, to suspend the principle of stare decisis and any portion of the governing case law with the unconstitutionally vague standards contained in Rule 9.24 of "inconsistent with substantial justice" and "not affect the substantial rights of the parties". The only standard governing the trial judge, or governing review, is the word substantial. Such standard is unconstitutionally vague. This Rule 9.24, with its standard of "substantial" abrogates the rights of all criminal litigants

in Kentucky to equal protection of the laws and due process of law protected by the 14th Amendment.

Mr. McGregor contends that his case affects all criminal litigants in state courts in Kentucky. Mr. McGregor contends that the Supreme Court of the United States should grant his petition for certiorari and on appeal should declare Kentucky Rule of Criminal Procedure 9.24, adopted by the Supreme Court of Kentucky, unconstitutional and remand the case for new trial by jury in the McCracken Circuit Court.

5. Appendix. The Appendix contains the judgment of the McCracken Circuit Court, the opinion of the Court of Appeals affirming, the order of the Court of Appeals denying rehearing, and the order of the Supreme Court of Kentucky denying discretionary review.

Counsel of record for

Monroe McGregor is:

Stephen Robert Bodell


Attorney at Law

P. O. Box 970

Paducah, KY 42002

502-443-4052

Petition submitted by:

A handwritten signature in cursive script, reading "Stephen Robert Bodell". The signature is written in dark ink and is positioned above the printed name.

Stephen Robert Bodell

MCCRACKEN CIRCUIT COURT

DIVISION NO. II

COMMONWEALTH OF KENTUCKY, PLAINTIFF

VS.

MONROE MCGREGOR, DEFENDANT

FINAL JUDGMENT

SENTENCE OF IMPRISONMENT IN THE COUNTY

JAIL

INDICTMENT NO. 86-CR-081

The defendant having been convicted by a jury of the crime of Fourth-Degree Assault, and said jury having recommended a sentence of one year and a fine of \$500,

On this 15th day of December, 1986, the defendant, appeared in open court with counsel, Hon. Stephen Bodell, and the Court inquired of the defendant and his counsel whether they had any legal cause why judgment should not be pronounced and afforded the defendant and counsel an opportunity to make any statements in the

defendant's behalf and to present any information in mitigation of punishment, the Court having considered probation or conditional discharge, is of the opinion that imprisonment of the defendant is necessary.

No sufficient cause having been shown why judgment should not be pronounced, sentence was imposed by the Court upon the defendant, and

IT IS THEREFORE ORDERED AND ADJUDGED by the Court that the defendant is guilty of the crime of Fourth-Degree Assault and that the defendant shall be confined in the county jail for one year and pay a fine of \$500 and court costs of \$65.

It is further ORDERED that the defendant be credited with the two days spent in custody prior to confinement.

Thereafter, the Court duly noti-

fied the defendant and counsel of defendant's rights to file a notice of appeal within 10 days, and that said notice may be made by defendant's counsel or by the defendant himself, or this said defendant may instruct the Clerk to file such notice of appeal.

It is further ORDERED that the defendant is released from custody pending appeal on an appeal bond of \$5,000 surety.

Entered this 15th day of December, 1986.

/s/ Ron Daniels  
HON. RON DANIELS, JUDGE  
MCCRACKEN CIRCUIT COURT  
DIVISION NO. II

NOTICE:

The foregoing Judgment was entered the 15th day of December, 1986, and was served upon the defendant by mailing a true copy to the Hon. Step-



hen Bodell, Attorney of Record, postage  
prepaid.

ALFRED OBERMARK, CLERK

MCCRACKEN CIRCUIT COURT

BY: /s/Barbara Gregory, D.C.

Copies to:

Hon. Stephen Bodell

Commonwealth's Attorney

OPINION RENDERED: August 28, 1987;

3:00 p.m.

NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

NO. 86-CA-2991-MR

MONROE MCGREGOR

APPELLANT

APPEAL FROM MCCRACKEN CIRCUIT COURT

V. HONORABLE RON DANIELS, JUDGE

ACTION NO. 86-CR-081

COMMONWEALTH OF KENTUCKY

APPELLEE

AFFIRMING

BEFORE: CLAYTON, MCDONALD, AND MILLER,

JUDGES.

MILLER, JUDGE. Monroe McGregor brings this appeal from a conviction of fourth-degree assault (KRS 508.030) and resulting punishment of one year imprisonment and \$500.00 fine. The matter grew out of a September 1984 automobile accident

involving a vehicle driven by appellant and another driven by one Gary Snider. Snider was seriously injured. Appellant, whose alcoholic blood test showed .27 percent, was originally indicted for first-degree assault under KRS 508.010 (1)(b). He brings this appeal, claiming the trial court erred in excluding evidence that a police officer issued a citation to him but not to Snider, although the latter was guilty of several violations, and further for excluding evidence that there was a pending civil suit against appellant.

It requires no citation of authority to know that the control and presentation of evidence, including the exclusion of whole or part of same, is within the sound discretion of the trial judge. In the absence of clear abuse, that discretion will not be interfered with on

appeal. Our examination of the record reveals no such abuse.

Moreover, under the circumstances of this case, any error was indeed harmless. RCr 9.24.

For the foregoing reasons, the judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

ATTORNEY FOR APPELLANT:

Stephen Robert Bodell

Post Office Box 970

Paducah, KY 42002-0970

ATTORNEYS FOR APPELLEE:

David L. Armstrong, Att'y Gen'l

Joseph F. Johnson, Ass't A. G.

Capitol Building

Frankfort, KY 40601-3494

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

NO. 86-CA-2991-MR

MONROE MCGREGOR

APPELLANT

APPEAL FROM MCCRACKEN CIRCUIT COURT

V. HONORABLE RON DANIELS, JUDGE

ACTION NO. 86-CR-081

COMMONWEALTH OF KENTUCKY

APPELLEE

ORDER DENYING PETITION FOR REHEARING

BEFORE: CLAYTON, MCDONALD, AND MILLER,  
JUDGES.

The Court having considered the  
Petition for Rehearing and being suffi-  
ciently advised, it is ORDERED that the  
same is hereby DENIED.

/s/ Boyce G. Clayton

JUDGE, COURT OF APPEALS

ENTERED: OCT 30 1987

SUPREME COURT OF KENTUCKY

87-SC-863-D

(86-CA-2991-MR)

MONROE MCGREGOR

MOVANT

MCCRACKEN CIRCUIT COURT

V.

NO. 86-CR-081

COMMONWEALTH OF KENTUCKY

RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion of the movant for a review of the decision of the Court of Appeals is denied.

ENTERED January 12, 1988.

/s/ Robert F. Stephens

Chief Justice

